

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-1340

B
P/S

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

-against-

HARVEY KORNBLUTH,

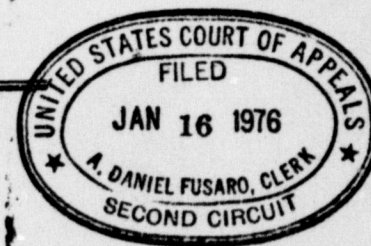
Appellant.

*Appeal from Criminal Conviction in the United States
District Court for the Eastern District of New York*

Appellant's Appendix

ROTH AND SILVER
Attorneys for Appellant
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

vs.

73 CR 1065

HARVEY KORNBLUTH

-----x

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INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

73 CR 1036

UNITED STATES OF AMERICA

INDICTMENT

18 U.S.C. 51014
18 U.S.C. 5371

-vs-

HARVEY KORNBLUTH
THOMAS RAGUSA,

S. Q. 12/19/73

Defendants

op. 3/14/74

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 25th day of April, 1973, in the Eastern District of New York, the defendant HARVEY KORNBLUTH did knowingly and wilfully make and cause to be made false statements of material facts in an application for a loan, submitted by HARVEY KORNBLUTH to the First National Bank of East Islip, New York, a bank the deposits of which are insured by the Federal Deposit Insurance Corporation, for the purpose of influencing said banking institution to approve said loan, in that the defendant did state and represent in said application that (1) he was then employed as a salesman for MEE Leasing Associates, 140 Cherry Valley Avenue, West Hempstead, New York for four and one half years, and (2) he had an annual salary of \$24,000+, and (3) that the purpose of the loan was to purchase a motor vehicle, which statements and representations were false as the defendant then and there well knew in that (1) he had not been employed for four and one half years by MEE Leasing Associates, 140 Cherry Valley Avenue, West Hempstead, New York, (2) he did not have an annual salary of \$24,000+ and (3) the purpose of the loan was not to purchase a motor vehicle.

[Title 18, United States Code, Section 1014]

COUNT TWO

From on or about April 25, 1973 to on or about April 27, 1973,

York, the defendants HARVEY KORNBLUTH and THOMAS RAGUSA willfully and knowingly did combine, conspire, confederate and agree together and with each other and with others both to the Grand Jury known and unknown, to make and cause to be made false statements of material facts on a loan application submitted to the First National Bank of East Islip, East Islip, New York, a Federal Deposit Insurance Corporation insured bank for the purpose of influencing the action of the said bank, in violation of Title 18, United States Code, Section 1014.

It was part of the said conspiracy that the defendant Harvey Kornbluth would enter the aforesaid bank wherein he would make out and present a loan application alleging fictitious purpose and falsified employment and salary information.

It was further a part of the said conspiracy that the defendant Thomas Ragusa would receive a substantial part of the proceeds of the said loan.

OVERT ACTS

In furtherance thereof and to effect the objects of the aforesaid conspiracy, the defendants committed the following overt acts:

1. On or about the 25th day of April, 1973, in the Eastern District of New York, the defendants had a conversation in Freeport, New York.
2. On or about the 25th day of April, 1973, the defendant Harvey Kornbluth entered the First National Bank of East Islip, East Islip, New York.
3. On or about the 25th day of April, 1973, the defendant Harvey Kornbluth wrote and printed entries into spaces provided on an application form of the First National Bank of East Islip.
4. On or about the 27th day of April, 1973, the defendant Harvey Kornbluth entered the First National Bank of East Islip, East Islip, New York.

[Title 18, United States Code, Section 371]

A TRUE BILL.

EDWARD J. BOYD JR.

UNITED STATES ATTORNEY

FOREMAN



TELEPHONE:
522-3494

SIMON CHREIN
ASSOCIATE ATTORNEY-IN-CHARGE
Eastern District

RICHARD L. SHANLEY, ESQ.
Organized Crime Section
35 Tillary Street
Brooklyn, New York 11201

5
THE LEGAL AID SOCIETY
CRIMINAL DEFENSE DIVISION
FEDERAL DEFENDER SERVICES UNIT
26 COURT STREET
BROOKLYN, N.Y. 11201
ROOM 701

WILLIAM GALLAGHER, *Attorney-in-Charge*

MURRAY MOGEL, CHIEF OF OPERATIONS
Southern and Eastern Districts

ORISON S. MARDEN
Chairman of the Board
SHELDON OLIENSIS
President
HAROLD H. HEALY, JR.
Treasurer
DAVID N. DINKINS
Secretary
EDWARD Q. CARR, JR.
Attorney-In-Chief

October 25, 1974

Re: United States v. HARVEY KORNBLUTH, 73 CR 1065

Dear Mr. Shanley:

In order to avoid motions for discovery and particulars, I would appreciate your making available to me all the information and materials the defendant is entitled to under the rules and cases.

1. Any statement made by the defendant, whether oral or written in the possession of the government, dealing with the facts of this case.
 2. Whether any property or money was seized from the defendant, his home or an area under his control that the government intends to offer into evidence against him or which served as a lead to evidence against him.
 3. If any property, or money was seized, describe the property and the time and place of seizure.
 4. Whether the government intends to connect the defendant to the crime alleged in this indictment by the use of any expert or scientific evidence.
 5. If the answer to the previous question is "yes" please make a copy of any report available to my office, particularly laboratory reports and handwriting analysis.
 6. Whether the defendant was the subject of electronic surveillance of any sort.
 7. Provide counsel with any information in the possession of the government which may tend to exonerate the defendant.
- con't....

The purpose of the Society is to render legal aid in the City of New York to persons who are without adequate means to employ other counsel. - By-laws of The Legal Aid Society.

TO: HARVEY SHANLEY, ESQ.

Page 2.

8. Provide counsel with a photocopy of the defendant's criminal record.

9. Provide counsel with a photocopy of the criminal records, if one exists, for any witness the government intends to call.

10. Have any search warrants or arrest warrants been issued in this case? If so, could we have a copy of the warrant and any supporting affidavits.

11. Whether any statements were made by co-defendants which tend to inculcate the defendant. If so, provide counsel with a copy of the statement.

12. The time and place of the occurrence of the alleged crime.

13. The manner the defendant was identified, e.g. lineup, photographic showups, etc.

Yours very truly,

Marion Seltzer

MARION SELTZER
Associate Attorney

MS:jgh

Filed 11/8/24

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK-----x
UNITED STATES OF AMERICA

-vs-

HARVEY KORNBLUTH,

Defendant
-----xBILL OF PARTICULARS & DISCOVERY

73 CR 1065

RICHARD L. SHANLEY, Special Attorney with the Organized Crime & Racketeering Section, United States Department of Justice, submits the following Bill of Particulars and Discovery.

1. Attached hereto are Grand Jury minutes dated 6-6-73 and copies of reports of interviews with the defendant. The reports are dated 5-4-73, 5-9-73, 5-18-73, 8-14-74, 8-21-74.
2. The Government has no present knowledge of any property seized from the defendant relevant to the trial of this case.
3. The Government has no present knowledge that the defendant was the subject of any electronic surveillance.
4. The Government has no present knowledge of any "Brady Material" in this case.
5. A photocopy of both defendant's criminal records are attached.
6. The Government will provide the defendant with photocopies of criminal records, if any, of it's witnesses at the time they testify.
7. No search warrants were issued in this case.

The defendant was arrested upon a Bench Warrant issued under this indictment.

8. Co-defendant in this case, Thomas Rayson, made no statements to agents of the Government.

9. With respect to Count One: The Government cannot particularize the exact time the alleged violation occurred. The Government believes

that the defendant filled out and signed the attached installment loan application on the premises of the First National Bank of East Islip. Copies of the following documents which pertain to this application are attached:

-2-

Application dated 4-25-73.

Copy of Installment Promissory Note.

TRW Credit Profile.

Document which is unlabeled.

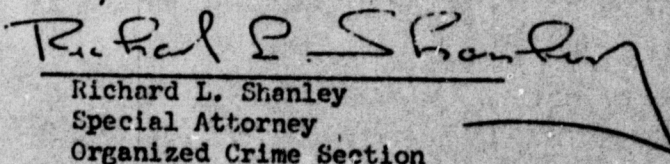
Installment Promissory Note dated 4-27-73.

File copy of financing statement document dated 4-30-73.

Check dated April 27, 1973.

10. With respect to Count Two: On or about April 25, 1974, the date being approximate, the defendant Thomas Ragusa had a conversation with the defendant Harvey Kornbluth, and others in a parking lot in the vicinity of the Chase Manhattan Bank in Freeport, Long Island, NY, with regard to making false statements of material facts on a loan application to the First National Bank of East Islip. The conversation took place during normal business hours.

Respectfully Submitted,


Richard L. Shanley
Special Attorney
Organized Crime Section

Dated: Brooklyn NY

II. The Government anticipates that the issues of law briefed below in this Memorandum will be raised in this trial:

- A. INTENT - The Government need not prove a scheme to defraud, but merely that the defendant made statements on the application knowing them to be false.

The clear wording of the statute indicates that the essence of the crime is the making of false statements for the purpose of influencing the action of a Federally insured bank, upon an application. It requires no defrauding or intent to defraud. This statute, like section 1010 of Title 18, United States Code, penalizes knowingly false statements and has nothing whatsoever to do with any scheme to defraud. Henninger -v- United States, 350 F.2d 849, 850 (10th Cir. 1965), cert. den. 382 U.S. 979; United States -v- Pesano, 293 F.2d 229 (2nd Cir. 1961). Indeed, the question is not even whether or not the loan was accepted, but simply whether at the time he made the false statement on the application, the defendant did so with the intent that it be offered to and accepted by the bank. Brilliant -v- United States, 297 F.2d 385, 389, (8th Cir. 1962). Thus, the government need not even prove that the application in question was offered to and accepted by the bank, Brilliant supra.

In Pesano, supra, the 2nd Circuit approved the following jury instruction concerning the intent necessary to convict:

"This statute (18 U.S.C. 1010) has nothing whatever to do with defrauding the Government or whether or not the Government is actually defrauded. This statute is pinpointed at the application for the loans. It makes it a criminal offense to make a false statement in those applications, knowing it to be false. (It is the purpose of this statute to allow the Government officials who insure these loans to rely on the applications and the representations made in those applications in making a determination as to whether or not

FEDERAL BUREAU OF INVESTIGATION

1.

5/29/73

Date of transcription

PETER MICHAEL FRAPPOLLO was interviewed at the Garden City Resident Agency of the FBI. At the outset he was furnished a form entitled "Voluntary Appearance; Advice of Rights" by SA MARTIN A. CROWE, which he read and signed. He thereafter furnished the following information:

FRAPPOLLO advised that about a month ago he was in the office of a leasing company owned by TONY MORANO on Cherry Valley Avenue in West Hempstead, New York. While there he met a person named HARVEY KORNBLUTH who was looking for a car to buy. He told him he knew of a car for sale and called JIMMY HADJILAZOU and told him that HARVEY KORNBLUTH wanted to buy a car and, since he had one for sale, maybe they could do business. FRAPPOLLO advised that KORNBLUTH and HADJILAZOU agreed to meet concerning the car.

FRAPPOLLO advised he had no further contact with KORNBLUTH. About a week later he called HADJILAZOU and found out that KORNBLUTH did not buy the car he had for sale.

FRAPPOLLO advised that he had gone to MORANO's to meet an individual named TONY, last name not recalled, in order to try to lease him a car. He claimed that he had TONY's telephone number in a book at home.

FRAPPOLLO identified a photograph of THOMAS RAGUSA, Nassau County Police Department Number 55012, dated 1/26/70, as identical with the TONY he met at MORANO's leasing company.

FRAPPOLLO did not recall that RAGUSA talked to KORNBLUTH and doubted that he knew him.

FRAPPOLLO denied any knowledge of a shylock loan or any effort to collect money from KORNBLUTH by either himself or RAGUSA. He denied any knowledge of an attempt by KORNBLUTH or anyone else to obtain a loan from the First National Bank of East Islip.

The following was obtained by observation and interview:

Name

PETER MICHAEL FRAPPOLLO

Interviewed on 5/25/73 at Garden City, New York File # NY 179-548

SAs MARTIN A. CROWE
JAMES T. MOLLOY

Date dictated

5/29/73

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; and its contents are not to be distributed outside your agency.

NY 179-668

2.

Also known as
DFOB
Height
Weight
Hair
Eyes
Residence

Wife
Former Wife
Children

Prior Residence

Sister

Brother

Mother
Father
Occupation
Employment

Prison

Peter Apollo, Peter Strappello
10/8/28, Queens, New York
5' 8"
260
Brown, balding
Blue
350 Ocean Avenue,
Massapequa, New York
Private house - acquired 6/72
cost - \$65,000. Monthly mortgage
payment - \$248.

GALE FRAPPOLLO

RUTH BAXUS

MICHAEL, 21

PAUL DAVID, 17

LEE ANN, 15

LINDA, 13

PAUL EDWARD, 9

DANIEL, 6

TINA, 3

44-15 25th Avenue,

Astoria, Queens, New York

11/29/71 to May or June, 1972

DIANE ISRAEL

West 10th St., Brooklyn, NY

PAUL SAMUEL FRAPPOLLO

Colonel, US Marine Corps

Naval Air Base, Laguna Beach,
California

ROSE, resides with DIANE ISRAEL

PAUL MICHAEL FRAPPOLLO, deceased
car salesman

Greenspan Motors,

New Hampton, NY (1969-1970)

Security Cars,

Amityville, New York (11/71-3/72)

Suffolk Auto Liquidators,

Brook and Farminale, NY (3/72-10/72)

World of Auto Auctions

Medford, NY (10/72 - 5/23/73)

Sing Sing, NY (10/70 - 11/71)

Bad checks

FEDERAL BUREAU OF INVESTIGATION

HARVEY ARTHUR KORNBLUTH was interviewed at 331 Connecticut Avenue, Massapequa, New York. At the outset he was furnished a form entitled "Interrogation; Advice of Rights" by SA MARTIN A. CROWE. After reading the form he executed a "Waiver of Rights", and thereafter furnished the following information:

KORNBLUTH advised he also uses the name HARVEY KAYE and H. ARTHUR KORNBLUTH.

KORNBLUTH advised he is currently employed as a salesman by Lease Cars of America, 140 Cherry Valley Avenue, West Hempstead, New York. He obtained this employment through a friend TONY MARANO, who is one of the owners.

While at his place of employment two men came into the office. As soon as he saw them he ran outside.

They
At the time ~~_____~~ came to his place of employment, which was about 2 weeks ago, ~~_____~~. They ~~_____~~ arranged for him, through "Jimmy the Greek", to go to the 1st National Bank of East Islip, Long Island, New York to obtain a loan.

Massapequa Park,
Interviewed on 5/3-4/73 at Garden City, New York

JAMES T. MOLLOY
by SAs MARTIN A. CROWE

Date dictated 5/4/73

KORNBLUTH advised he went to the Bank, spoke to a Mr. CLYDE (phonetic) and applied for a \$5,000 loan. He advised that when he made out the loan he gave his employment as with Lease Cars of America for a period of 4½ years.

KORNBLUTH advised he knew this was a false statement when he made it.

KORNBLUTH advised that on 4/27/73 he received a check of \$4,000 from the Bank. He explained that between the time he made the application and the time he received the \$4,000 check he had been notified by the Bank that they would not approve a \$5,000 loan. He then advised the Bank that he would put an additional \$1,000 down on the car he was buying. It was his understanding that one of the two men who had arranged for him to make the loan

had arranged to provide documents to the Bank which would reflect that the loan he was obtaining was to be secured by a specific automobile.

After obtaining the \$4,000 check, the proceeds of the loan, he endorsed and gave the check to TONY MARANO, who cashed it and gave him \$3,650 in cash. He then explained that his (KORNBLUTH's) girl friend JEAN LOVERA picked up the cash from MARANO and brought it to him at 331 Connecticut Avenue. This took place on 5/2/73.

The interview with KORNBLUTH was resumed at the Garden City, New York Office on the morning of 5/4/73. At the outset he was reminded that he was furnishing this information after having signed a "Waiver of Rights".

The following was obtained by observation and interview:

Name	HARVEY ARTHUR KORNBLUTH
Also known as	Harvey "Ayo", H. Arthur Kornbluth
DOB	3/27/39, Brooklyn, New York
Race	white
Sex	Male
Height	5'9"
Weight	220
Hair & Eyes	Brown
Social Security#	116-30-1049

(The following occurred in the absence of the jury.)

THE COURT: Good morning.

Are we ready to proceed?

MR. ROTH: Your Honor, may we have a moment.

As your Honor was entering the courtroom, the prosecution handed a document to the defense table which has not been read by any of us yet.

THE COURT: Sure.

MR. BARLOW: Certainly, your Honor, and I will explain for the record, while we are marking the exhibits, the documents, anyway.

Will you mark these, please? These two documents.

For the record, your Honor, I have two sets of papers that I will be handing over, the first a two-page report concerning an interview of Peter Michael Frappollo, which will be marked as Government's Exhibit 3 for identification, and I am turning -- I have already turned a copy over to defense attorneys, and I will turn this copy over also for convenience as probable Brady material.

Secondly, I have six pages of interview material concerning a Government witness in this case, which will be marked as Government's Exhibit 4

1 (After recess.)

2 (The following occurred in the absence of the
3 jury:)

4 MR. LEFKOWITZ: Before the jury is called in
5 may I be heard for a moment?

6 THE COURT: Of course. Wait until the defendants
7 and attorneys are here.

8 (Pause.)

9 THE COURT: Do you want to proceed, Mr. Lefkowitz?

10 MR. LEFKOWITZ: Yes, your Honor.

11 Your Honor, this morning, prior to the openings
12 I was served and your Honor, I believe, was shown a
13 copy of Government Exhibit 3 for Identification.

14 THE COURT: Let me see it.

15 MR. BARLOW: I don't think I gave a copy to the
16 Court.

17 MR. LEFKOWITZ: Oh, I'm sorry.

18 THE COURT: That's all right.

19 (Document handed to Court.)

20 THE COURT: Continue.

21 MR. LEFKOWITZ: And, your Honor, at the time
22 when counsel Barlow showed this to defense counsel he
23 stated that it was in the nature of Brady material.

24 Am I correct, Mr. Barlow?

25 MR. BARLOW: Yes.

MR. LEFKOWITZ: Thank you.

If it please the Court, in response to my motions the Government furnished me a bill of particulars which was made out by Richard L. Shanley who was at that time Special Attorney with the Organized Crime and Racketeering Section and in paragraph 10 thereof this bill of particulars informed me:

"The Government recognizes its responsibility under Brady vs. Maryland and represents that it is not aware of any Brady material."

Now, your Honor, I listened to Mr. Barlow's statement at the time of furnishing me with this interview of this man Peter Frappola. I have read it. It certainly contains exculpatory material and I am handing this today when we are at trial and I respectfully submit that at this time I move to dismiss Count Two of this indictment against my client in view of the circumstances and facts that I have just related to the Court.

THE COURT: Mr. Barlow?

MR. BARLOW: May I respond?

THE COURT: Yes, surely.

MR. BARLOW: Your Honor, the Government would oppose such a motion on two bases.

First of all, as I understand the admissions

3 1 of Brady v. Maryland and all the cases that have been
2 its progeny in, I guess, about the last 10 years, Brady
3 material refers to evidence which tends to exculpate
4 a defendant or defendants of a certain crime.

5 Referring to Government Exhibit 3 for Identifi-
6 cation, which is the interview of Mr. Frappola on
7 May 25, 1973, basically, it can be summarized as
8 Mr. Frappola knowing nothing about a shylock loan from
9 Mr. Ragusa to Mr. Kornbluth or an attempt by Mr. Kornbluth
10 to get a loan from the First National Bank of East
11 Islip.

12 Therefore, I do not think, under the strict rules
13 of Brady v. Maryland and of course, the other cases
14 refining it and illuminating it, that Mr. Frappola's
15 interview is strictly Brady material. It seems to be
16 rather neutral since, as I understand Brady, the
17 material must tend to exculpate, not be neutral.

18 Mr. Frappola's interview is in essence, such
19 neutral material it neither adds nor detracts from
20 the Government's case and only out of an abundance
21 of caution was the interview, Government Exhibit 3,
22 introduced to the defense as Brady material.

23 I think it is for that -- I don't think -- I know
24 it is for that reason, the apparent inconsistency
25 between Mr. Shanley's answer to Mr. Lefkowitz' request

1 for discovery and my turning over this interview really
2 isn't inconsistent. It is just, as I said, an abundance
3 or over-abundance of caution.

4 I can state also that if the defendants wish or
5 a defendant wishes to use Mr. Frappola as a witness
6 for this neutral testimony he should be readily avail-
7 able to them for this reason: Back when this case was
8 originally on for trial, I believe, in April, the
9 Government had subpoenaed Mr. Frappola.

10 I had contacted his attorney -- actually, his
11 present attorney also, Mr. John Sutter of Mineola and
12 I had written a letter after the first adjournment of
13 trial telling him Mr. Frappola is still under subpoena
14 and he should make himself available for testimony at
15 trial.

16 Therefore, if the defendants wish to use
17 Mr. Frappola or his evidence I think it is simply
18 a matter of calling Mr. Sutter at his office in
19 Mineola and he should be able to produce Mr. Frappola
20 within a day.

21 THE COURT: Mr. Barlow, does the Government
22 intend to use Mr. Frappola in its direct case or
23 rebuttal if that be required?

24 MR. BARLOW: No, your Honor. The Government
25 does not now intend to use Mr. Frappola as a witness.

5 1 THE COURT: Under any circumstances?

2 MR. BARLOW: No.

3 However, as I stated, for the purpose of avail-
4 ability, he is still under subpoena and can be made
5 available, I would think, to the defendants, just on
6 a phone call to Mr. Sutter.

7 THE COURT: Anything further, Mr. Lefkowitz?

8 MR. LEFKOWITZ: The only thing I add is that I
9 am rather surprised that it is in the nature of Brady
10 material before I make the motion but it is not in the
11 nature of Brady material after Mr. Barlow hears the
12 motion. I submit it is either fish or fowl.

13 I submit it is Brady material and was just made
14 available to me and I most respectfully urge the
15 motion.

16 THE COURT: Well, in an examination by the Court
17 of Government Exhibit 3 for Identification the only
18 item that appears to refer to your client is after the
19 identification.

20 It says that Frappola did not recall that
21 Ragusa talked to Kornbluth and doubted that he -- it
22 seems to refer to Kornbluth -- knew him.

23 So, after consideration of your motion the
24 Court denies the motion of the defendant Thomas
25 Ragusa for a dismissal of Count 2 of the indictment.

6 1 MR. LEFKOWITZ: Your Honor, I, of course, abide
2 by the Court's decision but having heard your words
3 I just wanted to call your Honor's attention that when
4 I say exculpatory -- counsel furnished me before the
5 selection of jurors yesterday, before the actual
6 commencement of the trial, before the actual placing
7 of his witness, Agent Crowe on the stand on the
8 suppression proceeding where it was obvious from the
9 statements therein as to what would be elicited as to
10 Mr. Ragusa's alleged presence --

11 THE COURT: That has nothing to do with Frappola.

12 MR. LEFKOWITZ: Very well.

13 Then, your Honor, I respectfully take exception
14 to your ruling but I wish Mr. Government Counsel, since
15 he has this witness under subpoena, I most certainly
16 want him produced in court because I want to talk to
17 him.

18 THE COURT: He will arrange that.

19 MR. BARLOW: I will certainly do that.

20 THE COURT: Mr. Barlow will arrange for that.

21 Yes, Mr. Roth?

22 MR. ROTH: I would make a similar motion as to
23 both counts of the indictment as to the defendant
24 Kornbluth who is named in both counts and I refer in
25 the bill of particulars prepared and filed by

1 Mr. Shanley, I believe undated, "The Government has
2 no present knowledge of any Brady material in this
3 case."

4 Paragraph 4 is the operative paragraph and I
5 indicate that Count One in which only the defendant
6 Kornbluth stands charged, it alleges in part that the
7 bank loan application was false, "that the purpose of
8 the loan was to purchase an automobile" and then later
9 in the same count it is alleged as false, "the purpose
10 of the loan was not to purchase an automobile."

11 In the interview with Mr. Frappola; "while
12 there he met a person named Harvey Kornbluth who was
13 looking for a car to buy. He told him he knew of a
14 car for sale and called Jimmy Hadjilazou and since
15 he had a car for sale maybe they could do business."

16 I think the other evidence the People intended
17 to produce based on the 3500 material marked today
18 would indicate that Jimmy Hadjilazou was present when
19 the bank application was made out and I think it would
20 tend to disprove that the application was made
21 fraudulently as to intent to purchase an automobile.

22 This document introduces a witness we did not
23 know about prior --

24 THE COURT: You mean Frappol

25 MR. ROTH: Yes.

1 THE COURT: He's be available. The Government
2 has him under subpoena.

3 This, in the nature of exculpatory material,
4 will be available when he comes to court.

5 MR. ROTH: I urge upon the Court that the second
6 day of trial is not the time for the Government to
7 recognize the Brady obligation and for that reason
8 alone I wish the Court to dismiss the entire indictment
9 against Mr. Kornbluth.

10 MR. BARLOW: The Government might agree with
11 Mr. Roth but for the next sentence of the next para-
12 graph in the interview, which is Government Exhibit 3.

13 The second sentence indicates that Frappola
14 advised Kornbluth of Hadjilazou and Kornbluth and
15 Hadjilazou agreed to meet concerning the car. It then
16 goes on, "Frappola advised he had no further contact
17 with Kornbluth. About a week later he called Hadjilazou
18 and found that Kornbluth did not buy the car he had
19 for sale."

20 I think that evidence would tend to implicate
21 Mr. Kornbluth and for that reason I don't think that
22 that portion of Mr. Frappola's interview really is
23 exculpatory material.

24 THE COURT: Well, it's a question of interpre-
25 tation.

1 The Court does not feel that this conversation
2 is prejudicial to the defendants in that Mr. Frappola
3 will be available and may be called by the defendants
4 if they require him.

5 Therefore, the motion to dismiss as to Harvey
6 Kornbluth is denied.

7 MR. ROTH: Most respectfully except.

8 THE COURT: Are you ready to proceed?

9 MR. BARLOW: Yes, your Honor.

10 THE COURT: All right. Bring in the jury.

11 (Jury entered jury box.)

12 THE COURT: Ladies and gentlemen, after I came
13 back into the courtroom I had some further legal
14 proceedings with the attorneys and that was why the
15 delay in bringing you back was extended.

16 We will now proceed with the Government's case.

17 MR. BARLOW: Yes, your Honor.

18 The Government calls as its first witness
19 Martin A. Crowe.

20 M A R T I N A . C R O W E , having first been duly sworn
21 by the Clerk of the Court took the witness stand and
22 testified as follows:

23 THE CLERK: State your name and spell it for
24 the reporter.

25 THE WITNESS: Martin A. Crowe, C-r-o-w-e.

Florio-direct

1 Q Now, going back to April 25, 1973, can you tell
2 us how you came to meet with Mr. Kornbluth that day?

3 A Well, as usual -- we used to have coffee, myself
4 and my workers and Mr. Morano's employees -- we used to have
5 coffee in the place and that morning Mr. Kornbluth asked me
6 to go look at a car with him, a 1972 Cadillac. I said I
7 would go out of courtesy. I used to do repairs or check
8 cars for MBE Associates.

9 Q Had you done this for Mr. Kornbluth before?

10 A Yes, I had.

11 Q How many times?

12 A I think it was twice previous.

13 He had a '68 or '69 Oldsmobile Toronado, a plum-
14 colored one. We had done a little repair work after he
15 bought it. It had checked out fairly well but it wasn't,
16 subsequently, in good working order.

17 He bought a '72 brown Toronado with a beige roof and
18 we checked that out and found it to be in sound condition.

19 Q You say he asked you to go look at a '72
20 Cadillac?

21 A Right.

22 Q Did you go with him to look at the Cadillac
23 that day?

24 A We were supposed to go but we went to a place
25

1
2 Kornbluth in April of 1973 --

3 A Pardon?

4 Q In April of 1973, how long had you known Mr.

5 Kornbluth?

6 A Approximately a month and a half.

7 Q And he asked you to look at a car?

8 A Correct.

9 Q And you went for that purpose?

10 A Right.

11 Q Knowing Mr. Kornbluth for a month and a half,
12 he took you to a parking lot where there were other people,
13 and some conversation?

14 A Correct.

15 Q Did you think it was strange that he took some-
16 one he knew a month, a month and a half, to a meeting in a
17 parking lot?

18 A I had become friendly with Harvey through his
19 brother, since I knew his brother three and a half years, and
20 his brother and I had a good, friendly relationship. I felt
21 no reason to distrust Mr. Kornbluth at that time.

22 Q You went to this parking lot -- Withdrawn.

23 You saw Mr. Kornbluth go into a bank, you say?

24 A Yes, I did.

25 Q And he came out of the bank how long afterwards?

Hadjilzou-cross/Roth

210

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A Everyone else present.

Q Was Mr. Florio present?

A No, sir.

Q Did you know Mr. Florio before today?

A Yes, I met him afterwards.

Q You didn't know Mr. Kornbluth prior to that day; is that correct?

A No.

Q You went with him to that bank?

A I met him there.

Q You met him at the bank?

A Yes.

Q Did you expect to sell Mr. Kornbluth a car?

A In all honesty, no.

Q Were you advised by the Government that you were a potential subject of this prosecution?

A Yes.

Q Did you make an arrangement with the Government in return for testifying here today?

A Yes.

Q You were advised that you were a potential subject of this prosecution?

A Yes.

Q Were you advised that you might be indicted

1 client and with my own time and with the Court's
2 time and with my colleagues' time, and with these
3 jurors in this trial's time than this man with
4 auction sales or automobile sales.

5 THE COURT: We are in the middle of it now --

6 MR. LEFKOWITZ: So all I'm asking the Court
7 now is -- well, it is now twenty minutes after
8 eleven, and whatever time you set for this case to
9 proceed again, that that be the time that we do so
10 proceed and don't have a renewing of this type of
11 request and extension: That is my whole point, Judge.

12 THE COURT: What time would you want to
13 proceed?

14 MR. BARLOW: In that case, your Honor, I
15 would ask for an adjournment until 1:30 or 1:15.

16 THE COURT: All right.

17 I will give him an adjournment until 1:30 to
18 continue the case.

19 MR. BARLOW: Okay, thank you, your Honor.

20 There are some other things that I should put
21 on the record, your Honor, in reference to
22 Mr. Frappolla and his availability:

23 I had left word to have his attorney,
24 Mr. Sutter, call the office yesterday. He did. I
25 talked to Mr. Sutter on the phone yesterday about

1 6:30. He had made contact with a person who knows
2 Mr. Frappolla in California. Apparently that person
3 had indicated that Mr. Frappolla is back in
4 Long Island, and apparently the person told Mr. Sutter
5 that he should be able to contact Mr. Frappolla
6 some time last night.

7 Mr. Sutter told me that he left his home phone
8 number with that person in California to have the
9 person call him either last night or from seven o'clock
10 until nine this morning, and after nine this morning
11 at his office.

12 I wasn't able to get Mr. Sutter in the office
13 this morning, but I left word with his office to have
14 him call Mr. Shanley. So it may very well be that
15 we will have word from Mr. Sutter when I get back to
16 the office or if I call the office momentarily.

17 THE COURT: This is on the availability of
18 Mr. Frappolla?

19 MR. BARLOW: Yes, sir, as I said, apparently
20 he is back in Long Island someplace so he should be
21 available to the defense if they want him.

22 THE COURT: All right.

23 What I think I will do, I think I will bring
24 the jury in and excuse them for the remainder of the
25 morning.

1 difficulty with bringing his witness here.

2 Now, we are all lawyers, and I understand his
3 problem, but still we have the mechanics and operation
4 and the equities of a trial, and the needs of the day,
5 and everything else has to be taken into consideration.

6 Your Honor, in that connection, I wish to point
7 out to the point that yesterday when I was handed mater-
8 ial, which was not in the nature of 3500 Material, Mr.
9 Barlow, identifying it as "possibly," and I think I am
10 quoting him correctly, "possibly in the nature of ex-
11 culpatory Brady material," and when I read that report,
12 which is an interview with the FBI, held, I believe, in
13 August of last year -- of '73, '73 --

14 (Mr. Roth indicated a document.)

15 MR. LEFKOWITZ: I am sorry, Judge, held on May
16 29, '73, and comparing that with the 3500 Material that
17 I was furnished relating to witnesses which were about
18 to be called, and which were called, and especially to-
19 day, having been furnished with an FBI Report, and the
20 Grand Jury minutes of Mr. Morano, the witness, I find
21 that the interview related to facts which Mr. Frappollo
22 was supposed to have stated to the FBI Agents, and who
23 Mr. Barlow represented to the Court is not going to be
24 called as a Government witness, either in his case in
25 chief or in rebuttal;

1 I respectfully submit that I find that these
2 are diametrically opposed statements of fact contained
3 in this report which this witness whom I have requested,
4 and I have, as I say, been informed of this by Mr.
5 Barlow in this late information given to me, which was
6 earmarked as Brady Material, and which in the bill of
7 particulars, in answer 10, Mr. Shanley at that time
8 stated that there was no Brady material.

9 So I am saying this to the Court:

10 I ask Mr. Barlow, has he gotten Mr. Peter
11 Frappollo to court, and he represented yesterday that
12 he has him under subpoena.

13 Your Honor, I can quote his exact words from
14 yesterday:

15 "All it takes is a phone call to Mr. Sutter, his
16 lawyer, to have him here, and no question about it."

17 Now he tells me today, and this first of all
18 when I questioned Mr. Barlow upon my return from lunch
19 around 1:30, then he told me that Mr. Sutter was still
20 out, he wasn't able to get Mr. Sutter.

21 I asked him to please be good enough and make
22 another phone call, and I represent to the Court at this
23 time that I have gotten -- and I am not personally
24 criticising Mr. Barlow -- but the facts are these, he
25 has not produced in court this man that I am talking

1 about, Frappollo, and I have gotten no indication with
2 any definiteness as to his being present, or his pres-
3 ence here, since he is under subpoena.

4 I am putting this together, your Honor, with
5 what is contained in the 3500 Material I see of Mr.
6 Morano, which I presume he will testify to, and come
7 forth along the lines set forth in the interview, and
8 it becomes highly exculpatory material insofar as Mr.
9 Frappollo's statement is concerned.

10 Your Honor, unless I have some more definite
11 statement of commitment as to what Mr. Barlow has rep-
12 resented to the Court yesterday, and what I see the
13 facts to be today, then I wish to make some motions in
14 that connection, your HONOR.

15 Now, I don't know whether he can produce him or
16 not.

17 THE COURT: Mr. Barlow?

18 MR. BARLOW: The Government's position is this,
19 your Honor:

20 First of all, the Government has evidence and
21 information that Mr. Ragusa knows Mr. Frappollo, has
22 known him for some time, and I would assume from that
23 that he has had at least some access to talking to Mr.
24 Frappollo about the facts of this case, and perhaps
25 even subpoenaing him for trial.

1 I don't know whether this has been done, and
2 rightfully so, because the Government doesn't have any
3 right to know what witnesses the defendants will pro-
4 duce.

5 THE COURT: I think you said you would produce
6 him, I think.

7 MR. BARLOW: I said he was under subpoena for
8 the first time this case was called, I believe April
9 18th, but whatever, and that after the trial was ad-
10 journed the first time, I sent letters to all of the
11 witnesses that the Government subpoenaed for the first
12 trial date, telling them they were still under subpoena,
13 and they were to appear on Tuesday morning, May 27,
14 1975, for trial.

15 THE COURT: Did he appear?

16 MR. BARLOW: No, your Honor, he did not.

17 THE COURT: Is there any way that you can produce
18 him, or have him produced?

19 MR. BARLOW: As I said before, your Honor, he
20 is represented by John Sutter. As a matter of fact, he
21 was served with the subpoena by Special Agent Crowe, I
22 believe, outside of the courtroom while he was on trial
23 in Nassau County, and Mr. Sutter said that he was in
24 contact with Mr. Frappollo, obviously, at that time, and
25 would be in contact with him later, and if the Government

1 needed him, that he could get him via the telephone.

2 After I produced Mr. Frappollo's statement,
3 Government's Exhibit 3 for identification, I called
4 Mr. Sutter, and as I think I have related to the Court
5 yesterday or this morning, he had been in contact with
6 the source in California, who indicated that Mr. Frappollo
7 was back in the New York area, in Long Island, and
8 should be able to make it here today.

9 As of 10:00 o'clock, or just before 10:00 o'clock,
10 the last time I spoke personally with Mr. Sutter, Mr.
11 Frappollo hadn't contacted him by telephone, so I don't
12 really know exactly what his whereabouts are, or whether
13 he is in fact available for testimony at the trial.

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15 (continued on next page.)
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R2 fls 15

EK:GA
T1R2PM

1 MR. LEFKOWITZ: Your Honor, I have never seen
2 Mr. Frappollo, I haven't served any subpoena on him,
3 and if I had known this, I certainly would have, now
4 that I have gotten this information.

5 I don't want to be repetitious, I have made my
6 statement, and I am sure your Honor heard me, but I
7 wish to read, if I may, Judge, from yesterday's tran-
8 script --

9 THE COURT: Read it.

10 MR. LEFKOWITZ: Mr. Barlow said:

11 "I can state also that if the defendants wish,
12 or the defendant wishes to use Mr. Frappollo as a wit-
13 ness for this neutral testimony, he should be readily
14 available to them for this reason.

15 "Back when this case was originally on for trial,
16 I believe in April, the Government had subpoenaed Mr.
17 Frappollo. It had contacted his attorney, actually
18 his present attorney, also, Mr. John Sutter, of Mineola,
19 and I had written a letter after the first adjournment
20 of trial, telling him Mr. Frappollo is still under sub-
21 poena, and he should make himself available to testify
22 at trial.

23 "Therefore, if the defendants wish to use Mr.
24 Frappollo or his evidence, I think it is a simple matter
25 of calling Mr. Sutter at his office in Mineola, and he

1 should be able to produce Mr. Frappollo within a day."

2 I now turn to page 39, where your Honor, before
3 ruling on the motion -- No, where your Honor ruled on
4 the motion, but prior to that, I believe it is page 37,
5 -- page 36, your Honor stated --

6 THE COURT: Page 36?

7 MR. LEFKOWITZ: Yes.

8 Your Honor stated, ad- I am reading it page --
9 line, line 18:

10 "He will arrange that.

11 "Mr. Barlow: I will certainly do that.

12 "The Court: Mr. Barlow will arrange for that."

13 And then you turn to counsel for Kornbluth and
14 said, "Yes, Mr. Roth," and you then went on to make
15 your ruling denying the motions.

16 Now, I wish to point out to your Honor that there
17 was no question yesterday in Mr. Barlow's mind about,
18 one, that this man, Frappollo, was under subpoena by
19 the Government;

20 Two, that he could be readily available.

21 I most respectfully suggest to the Court that
22 your Honor's decision denying the motion, based on what
23 I heard you say, and what I read in the transcript, was
24 strongly motivated by the fact that if this man were
25 available, then there is no need to grant the motion,

1 which I asked for, which, of course, was in a strong
2 measure of provisional relief.

3 Now I respectfully submit here we are the next
4 day, and your Honor heard only a moment ago that he is
5 now placing, or attempting to place, in good advocacy,
6 the blame for this on counsel, namely, that I should
7 have subpoenaed him, in so many words, and I respect-
8 fully am pointing --

9 THE COURT: He should have said that yesterday.

10 MR. LEFKOWITZ: Yes, and I represent to the
11 Court that if he were in any manner available to me to
12 question or subpoena, you can rest assured I would have
13 subpoenaed him.

14 I am now confronted with this situation, your
15 Honor, and in simple summary, they tell me in the bill
16 of particulars that there is no Brady material, then
17 not on the eve of trial, but at the commencement of
18 trial, I am given an statement of an interview with a
19 witness in May of '73, of a man who says that my client
20 came there to lease a car, and that is where he saw him,
21 and he denies any knowledge of this, that, or the
22 other thing, and whatever he says about my client is
23 totally exculpatory.

24 Now, that is two.

25 Three, I have made my motions yesterday, he rep-

1 resented that this man will be made available because
2 he is under subpoena.

3 Four, today he is introducing another witness
4 who obviously is not here yet, and we are waiting for
5 his appearance, and I am pointing out to the Court that
6 we are engaged in a court, it is not an equity case,
7 but it is a criminal case governed by certain rules of
8 procedure, certain rules of conduct, and I most humbly
9 and respectfully point out to the Court that if he does
10 not produce Mr. Frappollo, as he said he can and will
11 do, then I renew my motions made yesterday for a sever-
12 ance in this matter, and ask your Honor to reconsider
13 in the light of these events.

14 On the other hand, if he were to now represent
15 that he will produce this man -- Excuse me, if he cannot
16 produce this man, and if your Honor should refuse to
17 reconsider your judgment on my motions, then I most
18 respectfully would make this additional motion, that
19 this man's testimony, which is contra, and I am refer-
20 ring to Peter Frappollo, on certain facts, and which
21 Frappollo himself has a statement in the negative -- and
22 not to counsel, but in a statement to the FBI, that then
23 insofar as any testimony that Mr. Morano may give, that
24 it should not apply to my client.

25 MR. ROTH: If your Honor pleases, I would similarly

1 move for that relief which requests the dismissal of
2 the two Counts in the Indictment as against the defendant
3 Harvey Kornbluth, specifically for the purposes of the
4 record, and I don't want to be lengthy:

5 Your Honor, in Count One of the Indictment, it
6 is alleged that Mr. Kornbluth:

7 ". . . did knowingly and make and cause to be
8 made statements," and then, in number Three, that the
9 purpose of the loan was to purchase an automobile, and
10 then it says that this was a false statement, in that
11 the purpose of the loan was to purchase an automobile.

12 Now, your Honor, in the bill of particulars it
13 says:

14 "The Government has no present knowledge of any
15 Brady Material," in this case, and that is in number
16 4 of the bill of particulars.

17 Your Honor, we were given a report dated 5/29/73,
18 which in part reads, and this was yesterday morning, and
19 this is Mr. Frappollo's statement:

20 "While there, he met a person named Harvey Kornbluth
21 who was looking for a car to buy. He told him he knew
22 of a car for sale, and called Jimmy Hadjilazou, and
23 told him that Harvey Kornbluth wanted to buy a car, and
24 since he had one for sale, maybe they could do business."

25 Now, your Honor, this is Brady Material, and

1 exculpates the defendant Kornbluth from Count One in
2 the Indictment.

3 Your Honor, further, when this motion was made
4 yesterday, the Court ruled on Mr. Lefkowitz's motion,
5 and thereafter I made a similar motion, and the Court
6 specifically -- and I will read from page 39 what speci-
7 fically your Honor said:

8 "The Court does not feel that this conversation
9 is prejudicial to the defendants, in that Mr. Frappollo
10 will be available, and may be called by the defendants
11 if they require him, therefore the motion to dismiss as
12 to Harvey Kornbluth is denied."

13 I feel that taking the line of that specifically
14 indicates that the Court denied my motion principally
15 upon the grounds that Mr. Frappollo will be available,
16 Mr. Barlow having already made that representation in
17 the portion which Mr. Lefkowitz read to the Court dur-
18 ing the colloquy on Mr. Lefkowitz's motion.

19 Your Honor, I believe since we have lately dis-
20 covered Brady material, and insofar as the Court denied
21 the motion for dismissal by virtue of the representation
22 that Mr. Frappollo would be available to the defense to
23 call because the prosecution had subpoenaed him, and in
24 view of the fact that he has not been produced, and in
25 view of the fact that there has been some intimation

1 that he has gone to California, and we have no firm
2 information that he has returned definitely to New York,
3 he may not be in the jurisdiction, and in furtherance
4 of the interest of justice, the Counts of the Indict-
5 ment should be dismissed as to the defendant Kornbluth.

6 MR. BARLOW: Your Honor, the Government's response
7 is this:

8 First, as to the last few sentences of Mr. Roth,
9 that doesn't really comport with the facts as related
10 to me by Mr. Sutter. He said that apparently Mr.
11 Frappollo was in California, and we don't know whether
12 he is back in the jurisdiction. But Mr. Sutter told
13 me last night at about 6:13, 6:15, that the person he
14 had talked to, whom he couldn't name, in California,
15 had indicated to him that Mr. Frappollo had come back
16 to New York, and he was in Long Island some place.

17 I know through the FBI information that Mr.
18 Frappollo no longer lives at the address that we had
19 for him, that he had moved from there approximately
20 five or six months ago, I believe, although I am not
21 exactly sure of the length of time. That was the first
22 place where we attempted to serve the subpoena upon
23 him.

24 I would ask at this time, since he is under
25 subpoena, that the Court issue a bench warrant for him.

1 I would add one other thing, your Honor, and I
2 don't wish to delay this trial unduly, it has already
3 been delayed primarily on my behalf from approximately
4 11:00 o'clock until 2:30, right now.

5 Your Honor, if it is impossible to get Mr.
6 Frappollo here, the Government has no objection to
7 stipulating to what his testimony would be, based upon
8 the report of Mr. Crowe of May 25, 1973.

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10 (continued on next page.)
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1 THE COURT: Well, you see, you put the Court
2 in a very difficult position, because it was your posi-
3 tion that Mr. Frappollo would be available, and based
4 upon that, the Court took a certain position with re-
5 spect to this case.

6 MR. BARLOW: Yes, sir, that is true.

7 THE COURT: So, I don't know, but as to your
8 application, there is no reason why I should not grant
9 it, but the Court at this point is in a very difficult
10 position, because even if I grant it, what does that
11 mean, that you no longer have the responsibility to
12 produce him: Would that be the position?

13 MR. BARLOW: No, your Honor, the position would
14 change in this respect;

15 Right now, we are dependent upon Mr. Sutter, his
16 attorney, contacting him through his sources.

17 If a bench warrant is issued, that immediately
18 places Mr. Frappollo in a fugitive status, the FBI would
19 be looking for him, they would also immediately put the
20 warrant into NCIC so that Suffolk County and Nassau
21 County, who have investigated Mr. Frappollo, would be
22 searching for him.

23 MR. LEFKOWITZ: Your Honor, all of this is very
24 nice, but this isn't a one-way street here.

25 When Mr. Barlow made these statements and repre-

1 sentations to the Court, the Court acts on what it hears--

2 THE COURT: On what he repeesents.

3 MR. LEFKOWITZ: Of course, and I represent to
4 the Court that when I spoke to Mr. Barlow at 1:30, or
5 perhaps it was 1:25 today, I am the one who reminded
6 him to make the call, and I thought that he had already
7 done so.

8 Now, the reason I say it isn't a one-way street,
9 well, it is just as important for the prosecutor to
10 sometimes do something for the defendants as it is in
11 furtherance of his own prosecutive course.

12 Now, here, your Honor, there is no question that
13 this is Brady material.

14 If your Honor will, and I don't think your Honor
15 has seen the 3500 Material that was furnished on Morano --

16 THE COURT: No, not the latest.

17 MR. LEFKOWITZ: I will be happy, I will be happy
18 to hand it up to the Court.

19 MR. BARLOW: I have it right here.

20 (A document was handed to the Court.)

21 MR. LEFKOWITZ: If your Honor will look at that,
22 if your Honor has seen --

23 MR. BARLOW: I believe probably 3500-8 would be
24 the relevant document, and 3500-10, the Grand Jury testi-
25 mony of Mr. Morano -- and 3500-9, also.

1 MR. LEFKOWITZ: And this one (Indicating), the
2 fifth paragraph.

3 THE COURT: It is quite involved, but it is
4 material which the defense can use.

5 MR. LEFKOWITZ: Yes.

6 THE COURT: No question.

7 MR. LEFKOWITZ: And if you look at Government's
8 Exhibit 3 for identification, which is the statement
9 of Peter Frappollo, your Honor will see the diametrically
10 opposed statement there of this witness.

11 THE COURT: It is evident, counsel.

12 MR. LEFKOWITZ: I beg your pardon?

13 THE COURT: It is evident.

14 MR. LEFKOWITZ: That it is diametrically opposed?

15 THE COURT: Yes.

16 MR. LEFKOWITZ: Now, if it please the Court:

17 It is not my function as defense counsel to un-
18 duly burden the Court with effort and work which is not
19 a part of, or inherent in the case, and I am not going
20 to do that because of the pressure of the clock, and
21 as we are talking, it is now twenty-two to 3:00.

22 Counsel has just represented a few minutes ago
23 that that man, Morano, called at 11:04 or 11:06, and
24 advised him that he would be here by 1:00 o'clock.

25 Now, I point out to the Court that it is now

1 2 Now I am not interested in the motivation, in
2 the reasons for this; I am just interested in moving
3 ahead.

4 THE COURT: That's the Court's position.

5 MR. LEFKOWITZ: I am sure, and I am hopeful
6 that -- and we know that there is no traffic moving
7 westward from Mineola at this hour, so the roads
8 are not encumbered by unusual traffic, hopefully,
9 but I wouldn't be at all surprised, Judge, and I say
10 this as an old war horse: When we get around a
11 quarter to four that --

12 THE COURT: You don't show it.

13 MR. LEFKOWITZ: I don't show it, and I don't
14 want to diagnosticate, but I don't have to call to
15 your Honor's attention that you were once a federal
16 prosecutor --

17 THE COURT: Yes.

18 MR. LEFKOWITZ: And I say this --

19 THE COURT: I know the problem.

20 MR. LEFKOWITZ: There are problems but I
21 have my problem and I also have my duty, your Honor,
22 so I don't mean to burden or encumber the Court.
23 But in view of all these circumstances, and specifically
24 and particularly, the words "Brady material," and it
25 is not symbolic when used from the different side

1 of the stick, but it has been ruled by our high courts
2 and our Second Circuit here has been most orthodox
3 in its demands for observance that such a violation
4 is not just frowned upon and not just categorized as
5 something that should not have been done but it is
6 something that is acted upon so that it will not be
7 done in the future.

8 And I respectfully submit that I am not reach-
9 ing into the blue yonder for any argumentative
10 material to use for advocacy in furtherance of my
11 client's cause, but I am faced with this actual
12 problem here and I haven't got this man, and on top
13 of that he, for whom I have a great deal of regard
14 and respect -- we have had quite a few cases together,
15 Judge -- he is confronted with his own problems. But
16 I submit to your Honor that I am fully within the
17 confines of the demands of law when I put forth to
18 you that the motion that I made to you yesterday
19 in light of what occurred here had a basis and a
20 flesh, was full of reason, and your Honor in hearing
21 the representations made by counsel for the Govern-
22 ment, knowing that since defense counsel represented,
23 and I so did, that I wanted to interview this man,
24 I didn't represent that I was going to call him but
25 I can represent to the Court right now that in reading

1 what I have read in these reports if I interviewed him
2 right now I most certainly would call him, I would be
3 a fool not to, I would be remiss in my duty.

4 But I can't do all of that and I must most
5 respectfully renew my motion for a dismissal insofar
6 as Thomas Ragusa is concerned and ask your Honor to
7 reconsider in light of the facts that have come to
8 light.

9 THE COURT: Based on the fact that the Govern-
10 ment cannot or will not produce Frappolla?

11 MR. LEFKOWITZ: May I say that his statement
12 doesn't satisfy the situation. We need him here, it
13 doesn't --

14 THE COURT: No, that would by no means satisfy
15 it.

16 MR. LEFKOWITZ: Absolutely not.

17 THE COURT: Not under the circumstances.
18 But the only thing as to that is that I would have to
19 give the Government a chance. It might well be that
20 Frappolla might be produced tomorrow morning; I have
21 to give them an opportunity.

22 MR. LEFKOWITZ: All right.

23 (Continued on next page.)
24
25

1 MR. DEFROWITZ: All right. 250

2 THE COURT: I couldn't just say that -- it
3 must be done immediately.

4 In fact he has requested a bench warrant for
5 Frappolla.

6 The Court will order a bench warrant for
7 Frappolla. A bench warrant is ordered.

8 MR. BARLOW: Thank you, your honor.

9 MR. DEFROWITZ: Excuse me.

10 And your Honor will hold in abeyance a ruling
11 on my motion until tomorrow morning at 10:00 o'clock?

12 THE COURT: Yes.

13 MR. ROTH: Likewise as to the defendant
14 Kornbluth?

15 THE COURT: Yes.

16 MR. ROTH: May I inquire whether the Court
17 will rule on my motion to preclude the calling of
18 the witness Morano in view of the absence of the
19 compliance with the Bill of Particulars which stated
20 that the defense would be provided with his criminal
21 record.

22 THE COURT: As to that the motion is denied.

23 MR. ROTH: Respectfully except.

24 THE COURT: I don't see, even at this juncture,
25 why you can't provide them with a copy of his criminal

(On May 30, 1976 at 2:00 p.m., the trial resumed.)

THE COURT: Now, what is it that we are about to do?

MR. LEFKOWITZ: Your Honor held in abeyance at counsels' request the reconsideration and judgment on the motion.

My motion was to dismiss on Brady material and lack of presence of this witness.

You had issued a bench warrant yesterday --

THE COURT: For Mr. Frappolo.

MR. LEFKOWITZ: Yes.

THE COURT: What is your position on Frappolo?

MR. BARLOW: I can state for the record, your Honor, the bench warrant of course was issued last night, F.B.I. agents were out in the street yesterday evening looking for Mr. Frappolo at every address they knew where he might be and every address which the Nassau County Police Department or at least the Detective Squad that was involved in Mr. Frappolo's prosecution several weeks ago knew where he may be, but they couldn't find him.

Your Honor, Mr. Sutter's office informed me after I went back to the office last night, I think it was a Mr. O'Connor, one of Mr. Sutter's partners, he said that he couldn't find Mr. Frappolo's phone number in their file and

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2 also that they hadn't telephoned him at all since he had
3 always shown up in his trial, when he was on trial.

4 I called again just before ten o'clock and the
5 word from Mr. Sutter's office was that they had called
6 everyone that they knew, who knew Mr. Frappolo, and from
7 one person they had contacted that person had said that
8 Mr. Frappolo was on his way back to California.

9 This is where we stand ineffectually as far as
10 Mr. Frappolo's presence, your Honor.

11 MR. LEFKOWITZ: Your Honor, all of this is
12 very nice but this is a witness that is no stranger to this
13 case. Your Honor has heard his name mentioned by witnesses
14 called by the Government.

15 I have here -- well, when I was here at ten this
16 morning and we criss-crossed, he went here I went to his
17 office --

18 THE COURT: Yes.

19 MR. LEFKOWITZ: But he gave this, he left this
20 note with the assistant who was here on another case that
21 John Sutter's office does not have Frappolo's phone number.

22 THE COURT: It seems that Mr. Frappolo will not
23 be here today.

24 MR. LEFKOWITZ: That is correct, and since Mr.
25 Frappolo is a witness that the defendant would very much

1
2 like to have here, and since the Government -- and we have
3 this document that I am referring to as Government's exhibit
4 number three for identification which was before the Court
5 and with which I was furnished with a copy, so without being
6 redundantly repetitious I most respectfully urge upon the
7 Court that your Honor, in view of the facts and circumstances
8 here, dismiss this indictment against my client.

9 THE COURT: Anything, Mr. Barlow?

10 MR. BARLOW: Yes, your Honor, unless Mr. Roth
11 wants to go first, I have a fairly extensive motion based on
12 the law.

13 MR. ROTH: Your Honor, I would join in the motion
14 so he can respond.

15 THE COURT: You can make your argument first.

16 MR. ROTH: I would join in the motion as to both
17 counts that allege crimes against the defendant Harvey Korn-
18 bluth on the extensive grounds I set forth yesterday, and I
19 will not burden the Court with all the details, however I
20 do remind the Court that originally we were advised there was
21 no Brady material during the trial, but Mr. Frappolo was intro-
22 duced to us as Brady material and the Court denied our original
23 motions upon the representation that Mr. Frappolo physically
24 would be furnished, that he was under the control of the
25 prosecution, and that appears not to be the case.

1
2 Your Honor, we have been denied a great right in
3 that the Brady material was not timely furnished, we have
4 been misled in the bill of particulars that there was no
5 Brady material and that as such, if the indictment would not
6 be dismissed at this time, the Brady case would be meaning-
7 less.

8 I would urge all the grounds that I urged yes-
9 terday at the original making of the motion upon this re-
10 newal of the motion.

11 THE COURT: Yes, Mr. Barlow.

12 MR. BARLOW: Your Honor, as the Court knows the
13 main purpose of Brady versus Maryland and its companion
14 case a few years later, Gills versus Maryland and all the
15 cases that have gone on behind it, it is to assure a defendant
16 that he would not be denied exculpatory evidence known to the
17 Government but not known to him. The citation for that is
18 472 F. 2d 599.

19 I think that one of the factors to be considered
20 in a determination of whether material is Brady and whether
21 it should be turned over, and basically what you do in a
22 situation like this, including what the remedy is, is to go
23 to the defendant's knowledge not only of the material that
24 the witness may have but of his existence.

25 Now going to Mr. Kornbluth, first, as far as

1
2 availability of what Mr. Frappolo might say, Government's
3 exhibit one for the hearing was the unexcised portion of
4 Mr. Kornbluth's admission. This was excised, of course, for
5 the jury because it was prejudicial under Bruton versus
6 United States.

7 Mr. Kornbluth told the agents at the time that
8 he came to his place of employment about two weeks ago --
9 and this would be two weeks before May third, 1973, he
10 was then accompanied by Peter Frappolo and that they pressed
11 him for the five thousand dollars which he owed -- arranged
12 through him -- excuse me, arranged for him through Jimmy-
13 the-Greek to go to the First National Bank of East Islip,
14 New York, to obtain "a loan."

15 Thus in Mr. Kornbluth's case the statement of
16 Mr. Frappolo is completely at odds with what Mr. Kornbluth
17 told the agents back in 1973, about two weeks before or
18 about two weeks after the events occurred in this case.

19 I think it is a reasonable inference that Mr.
20 Kornbluth at that time knew where Mr. Frappolo was and he
21 was certainly available to him at that time to discuss what
22 evidence he might give.

23 Now as to Mr. Ragusa, Mr. Ragusa was arrested
24 on a bench warrant in this case after the indictment was
25 sealed on May 14, 1974, and among several items that were

1
2 seized from his person on the arrest were an address book
3 and various business cards. One of those cards was labeled
4 MBE Leasing Associates, Inc., and it had written on it,
5 "Pete," with three telephone numbers, the first two numbers
6 apparently being the business numbers of MBE Leasing Associ-
7 ates, Inc., and the last number, 516 - 579 - 9648 being Mr.
8 Frappolo's home phone number at the time, and if need be Mr.
9 Malloy would testify as to the arrest and the search, and
10 there was a subsequent giving back to Mr. Ragusa of the
11 actual items seized but there was the xeroxing of all of the
12 evidence that was seized from him at that time.

13 Your Honor, so in 1973 Mr. Kornbluth knew of Mr.
14 Frappolo's existence and in 1974 Mr. Ragusa not only knew of
15 his existence but he knew where he was working and what his
16 home phone number was.

17 Secondly, as to the time of turning over, Brady
18 versus Maryland may appear simplistic, but it is not. There
19 are several factors involved and they are complicated factors
20 in and of themselves.

21 In the first place, one factor to be considered
22 in determining whether or not there is a violation of Brady
23 versus Maryland is the request that is made in the first
24 instance, and both defense counsel -- I believe Legal Aid
25 on behalf of Mr. Kornbluth initially and Mr. Lefkowitz on

1
2 behalf of Mr. Ragusa, came forward with the usual defense
3 question about Brady material, which is, Is there any excul-
4 patory material as far as my client is concerned in this case.

5 That is a very general question, and in United
6 States versus Evanchick, 413 U.S. 950, Second Circuit, and
7 this is a case which concerned a defendant filed motions as
8 were done in this case --

9 MR. LEFKOWITZ: Excuse me for interrupting, but
10 I think it would only be fair to this jury, Judge, and I am
11 not saying this in front of them so you can't accuse me of
12 carrying favor, but they have been sitting here all day doing
13 nothing --

14 THE COURT: Right.

15 MR. LEFKOWITZ: Wondering what the devil we are
16 doing, and I might respectfully suggest to the Court that they
17 be excused.

18 THE COURT: Well, the only thing is Mr. Morano
19 is here, he came back --

20 MR. LEFKOWITZ: I am perfectly satisfied to stay
21 here as long as you wish to, Judge.

22 THE COURT: No.

23 I don't want to bring him back another day.

24 Well, do you intend to use him?

25 MR. LEFKOWITZ: Perhaps, but my consideration for

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2 MR. LEFKOWITZ: Judge, I withdraw my suggestion.

3 THE COURT: What I would like to do, since he
4 would come back if we can finish this motion, if you intend
5 to use him, I would like to finish up with him today if
6 I can.

7 MR. LEFKOWITZ: Well, okay, let us proceed.

8 THE COURT: All right.

9 MR. LEFKOWITZ: Thank you.

10 DEFENDANT THOMAS RAGUSA: Your Honor, can I talk
11 with my counsel?

12 THE COURT: Sure.

13 (At this point Mr. Ragusa conferred with his
14 attorney.)

15 THE COURT: You may continue, Mr. Barlow.

16 MR. BARLOW: Yes, your Honor.

17 In that case, the Evanchick case, at the time
18 of trial the Court ordered the Government to turn over any
19 exculpatory information with respect to any of the defendants
20 which would be useful in their behalf.

21 After the Government objected, the order was
22 narrowed and denied as being much too broad.

23 The next day, and this was during trial when
24 the material hadn't yet been turned over, the defendants
25 again made a specific request for investigative information

12 1 concerning an alleged co-conspirator.

2 The defendants were unable to indicate how the
3 information would be helpful. The motion was denied.
4

5 The case was eventually affirmed, and in connec-
6 tion with that, United States of America versus Ruggiero,
7 472 F. 2d 599, this was a false statement before a Grand Jury,
8 and that case came out of lockers which the Waterfront
9 Commission cancelled several years ago, I think it was one
10 of Mr. Itkins' cases, Marcus, and in that case Mr. Ruggiero
11 claimed on appeal that the Grand Jury testimony of several
12 witnesses or several potential witnesses had been denied him
13 and moved for a reversal because of Brady, and in connection
14 with that the Second Circuit -- and the purpose of it was to
15 provide the defendant with complete disclosure of all of the
16 evidence, and I am paraphrasing and leaving some of this out,
17 but to assure that he would not be denied access to exculpa-
18 tory evidence known to the Government but unknown to him.
19

20 It is the Government's position that the initial
21 request for Brady material was as broad or broader than the
22 request in both of these cases, and that if the Government
23 had been given more specific requests, perhaps the decision
24 to turn over Mr. Frappolo's statement would have been made
25 much sooner.

Your Honor, the Government is not obligated under

13 1
2 Brady to look through everything in the file, it is to look
3 through the file and find the things that it reasonably
4 thinks is Brady material and turn them over.

5 Which brings us to the third point, and that is
6 when Brady material should be turned over:

7 There are several cases stating that Brady
8 material need not be disclosed before trial. These are mostly
9 federal sup cases and the closest case to this one geograph-
10 ically is United States versus Zive, 299 F. 2d -- I am sorry,
11 F. Sup. 1273 in the Southern District. Another Southern
12 District case, Manhattan Brush Company, 38 F.R.D. 4, and
13 there are several circuit cases, United States versus Moore,
14 439 F. 2d 1107, that is a Sixth Circuit 1971 case.

15 In this case, of course, the Brady material was
16 turned over the first day of trial, and I think the Court
17 remembers the Government's explanation of the reason for
18 turning it over at that time.

19 The Government still contends that this evidence
20 may be Brady material, but the Government is not sure that it
21 is.

22 Now getting down to the facts of this case:

23 In all the cases that I have cited before and the
24 cases that I have researched last night and this morning, they
25 talk about material, Brady material being turned over. In this

1 case the Brady material was turned over, the Government re -
2 presented that the witness had been subpoenaed by the Govern-
3 ment and that he should be available on the representation
4 of his counsel that he was available on a telephone call,
5 and very soon after I made the representation and Mr. Lef-
6 kowitz, I believe, made the first motion to have Mr. Frappolo
7 here, and then we learned for the first time that Mr. Sutter's
8 office did not have that good control of Mr. Frappolo.

9
10 Of course, as to Mr. Frappolo, the last communica-
11 tion that had been sent to Mr. Sutter, that is to Mr.
12 Frappolo through Mr. Sutter, was his copy of the letter which
13 I sent to all the Government witnesses who had been sub-
14 poenaed for the trial back in April.

15 This letter reads:

16 "This letter is to advise you that the trial in
17 the above case has been adjourned" -- by the way, this letter
18 was typed on May 2, 1975, and it states;

19 "This letter is to advise you that the trial in
20 the above case has been adjourned to Tuesday, May 27, 1975
21 because Judge Bramwell, the presiding Judge, has a civil
22 trial now in progress.

23 "You are still under subpoena for this trial,
24 and if you have not done so yet, please contact me and arrange
25 for a mutually convenient date prior to May 27, 1975 so we

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2 may prepare you for testimony and schedule appearance for
3 trial."

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6 (continued on next page)
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2 MR. BARLOW: Mr. Frappollo never contacted
3 this office prior to, well, he's never contacted this
4 office. And, first contact I had with Mr. Sutter was
5 after Mr. Lefkowitz said he wanted Mr. Frappollo as a
6 witness several days ago, and I think yesterday also.

7 Defense counsel was talking about the Government being
8 bound by its representation that Mr. Frappollo was
9 available. The Government respectfully submits that is
10 not the law. The Government is bound by its
11 representation on opening statement as to what the
12 evidence is going to be. It has to prove the facts
13 and the charges alleged in the indictment.

14 But if a witness has been subpoenaed, and doesn't
15 show up, if two or three dozen telephone calls have
16 been made in an attempt to locate him, if a bench
17 warrant has been issued and agents have been out in the
18 street at night attempting to locate him, I don't think
19 that the Government should be bound by a representation
20 which was derived from his attorney's representation,
21 he was available. It still stands, the Government's
22 contention, Mr. Frappollo is not available to the
23 Government right now. If he's arrested some place
24 between here and California, then he's available. But
25 as of right now, Mr. Crow and no one else in the New

2
1 2 York office of the FBI, Detective Wilson of the Nassau
2 Police Department, and Mr. Sutter's office in Mineola,
3 have no idea where the man is other than the fact that
4 he's supposedly on his way from New York to California.

5 THE COURT: Thank you.

6 Mr. Lefkowitz.

7 MR. BARLOW: Just one other thing, your Honor:
8 All along, counsel has been talking about dismissal of
9 the indictment. The Government submits that they have
10 no support for this remedy at all. A research shows,
11 first of all --

12 THE COURT: That's his motion.

13 MR. BARLOW: Yes. I would merely say that there
14 is no case that I can find where an indictment has
15 been dismissed during trial for any failure of the
16 Government under Brady v. Maryland.

17 There is one case where an indictment was
18 dismissed before trial under Brady v. Maryland; that's
19 U.S. v. Heath, H-e-a-t-h 260, F. 2d 623. Comes from
20 -- I'm sorry, I can't remember which circuit that is.
21 Where an indictment was dismissed on a tax case before
22 trial because the defendant had voluntarily turned
23 over his files to the IRS agents. The IRS eventually
24 lost the file before trial and defendant said he needed
25 that for his defense to show he was innocent, and the

3 Judge dismissed the case. Apparently, on the assumption
the Government would appeal. The appeal was dismissed
and in the dismissal the Court of Appeals was very
careful to distinguish between pretrial and trial
dismissal.

Quoting from page 626, "The boundaries of
disclosure before trial and the remedies for failure to
produce should be left to the absolute discretion of
the trial judge, unless the defendant is convicted in
which case, review thereof may be had."

The Government submits that dismissal of the
indictment is entirely improper here. If the
defendants are alleging unfairness, under Brady v.
Maryland, they have other remedies which are the proper
remedies to ask for. The Government would oppose any
motion to dismiss the indictment at this time.

THE COURT: Yes, sir, Mr. Lefkowitz.

MR. LEFKOWITZ: Well, your Honor, I must stand
up and point out a couple of things to the Court, and
I have never up to this point in any of my argument
before the Court, in fact I did just the opposite, but
I am being critical not of Mr. Fred Barlow personally,
but the office that he represents, and for this reason:
It is true that he is a prosecutor and I'm a defense
lawyer. But he knows what we're talking about when in

4 a request of defense counsel, we ask for -- he termed
it "the not usual question s to whether there is any
Brady material."

I term it the very essential question, it
doesn't have to have any with it, but I
submit the answer doesn't have to be cute. It has to
be direct. It's given by a counselor of law and I
know as a defense lawyer, who after many years of
practice from time to time, am reminded of the very
stringent duties that we have to perform in the
ethical conduct that we're called upon because we're
always ready to have somebody else jump on us. And
your Honor, what am I supposed to do when I get an
answer to a formal motion and it says, "No Brady
material"?

Your Honor, he tells the Court about a -- a
pocket memorandum book that was taken from my client
at the time of arrest. There is no dispute about that.
There is no dispute that in that memorandum book
appeared the name Frappollo, firstname Peter. I was
substituted on or about April 14 of last year. After
my first interview with my client, I took all names
and as I do in all cases, I try to contact each and
every one of the people that I thought could give me
some information relating to the true facts of the case.

1 5 I could not get in touch with Mr. Frappollo. I told
2 my client to do so, constantly, and he could not
3 because that telephone number that is in that book, my
4 learned colleague well knows, was not the number to
5 which this man responded.

6 Now, the point of it all is that he had that
7 sheet at all times, Government Exhibit 3 for
8 identification. All he had to do was give it to me last
9 year and all this that we're now going through would
10 have been an aborted nullity. But he didn't give it
11 to me, Judge.

12 Now, I don't have to seek out his motives. That
13 is the very reason for Brady. I further submit if it
14 please the Court, I simply say this: When I was shown
15 that statement and the statement is quite clear on it,
16 I want to talk to this man because if they don't call
17 him, I want to call him. Not as a means of getting a
18 technical obstructive defense in here, which might
19 possibly turn out favorably to my client, but because
20 what I see is that this very agent who questioned this
21 very Frappollo has placed here on "on a date of
22 transcription being 5/29/73, the interview being taken
23 on 5/25/73" I respectfully submit, I have no argument
24 with counselor for the prosecution. That they can
25 choose whatever evidence they have. After they marshal

1 6 it and use it at a trial, I can't tell them what to
2 use. Of course, that's the law. And that's why in my
3 opening I said evidence and witnesses they choose to
4 produce in this courtroom.

5 But your Honor, I'm faced with a real question.
6 I am faced with a problem. There are various ways of
7 handling it, I'm sure. But I'm also faced with various
8 situations that defense lawyers come under and are
9 coerced to face. Not because of prosecutorial
10 misconduct, but because of the way things happen
11 sometimes.

12 Now, when they do happen, I respectfully submit
13 that a man who sits in our court as a defendant doesn't
14 have it owed to him that he be treated with extra-
15 ordinary courtesy. But our law is very demanding on a
16 question of proper conduct, due process, and everything
17 else that goes with it.

18 Now, if that isn't present on this issue here,
19 then Judge, I really don't know when it would be
20 present. And it's this kind of ruling which makes his
21 office demands from his office that they comply with
22 these decisions which tell them to furnish us with the
23 material. And when he cites these cases that he does,
24 Judge, I know he's done a lot of work. Judge, every
25 case that he cited, I don't disagree with. I agree

1 7 with him and on the very basis of what he is citing, I
2 am moving.

3 Now, your Honor, insofar as authority, a motion
4 to dismiss, and I don't mean to be egotistically
5 presumptuous, lies at any time.

6 THE COURT: No question.

7 MR. LEFKOWITZ: I have made it because of what
8 has come at this point. If he wishes to create the
9 result that I am seeking through any other remedy,
10 I'll go along with him. I'm interested in that word
11 that I haven't learned yet after some thirty-nine
12 years of practice. I don't know what the word justice
13 means yet, Judge. I do remember what Judge Cardoza
14 said, not because I heard it but because I read it.
15 He said, "The only justice that a defendant in a
16 criminal case can look forward to is the personality of
17 the judge in his case."

18 Now, I didn't say that, but after many, many
19 years of practice, I know that there is a great deal
20 of wisdom in it. But like all other so-called proverbs
21 or statements of wisdom, they are not totally
22 conclusive or all-conclusive. But your Honor, I think
23 that I'm entitled on behalf of my client for some
24 measure of relief here. I want to assure the Court
25 that I have been trying daily until ten after two

1 both myself and my client have made every effort to
2 try to reach this man. We haven't been successful.

3 Now that's what I'm faced with and that's the
4 purpose and the reason for my motion.

5 THE COURT: Mr. Roth?

6 MR. ROTH: If your Honor please, I think it
7 was March 14th I became substituted in this matter for
8 the defendant Kornbluth, previously been represented
9 by the Federal Defender Services Unit of the Criminal
10 Defense Division of the Legal Aid Society.

11 On the same day as I formally appeared in this
12 court, filed my notice of appearance, I was provided
13 with the discovery materials by the prosecutor.

14 THE COURT: Same thing that's been said many
15 times.

16 MR. ROTH: I would point out, however, on
17 that day I was also furnished a copy of what was
18 requested. The request was that the prosecution
19 provide the defense with any information in the
20 possession of the Government, which may tend to
21 exonerate the defendant. The portion that Mr. Barlow
22 reads of the unredacted statement, would indicate that
23 at the time Tommy came to his place of employment,
24 which was about two weeks ago, he, Tommy, was
25 accompanied by Peter Frappollo. This was a statement

1 9 furnished to me in March. My client advises me prior
2 to that day he did not know Peter Frappollo. He does
3 not know Peter Frappollo, did not know at that time
4 that Peter Frappollo would be one and the same person.

5 As such, the mere statement in the -- to the
6 Federal Bureau of Investigation that Peter Frappollo
7 was present at certain times and places does not
8 provide me as the prosecution would indicate to the
9 Court, with an independent means to locate a person
10 named, "Peter Michael Frappollo." The person, the
11 Peter Frappollo in the statement given in the interview
12 on 5/25/73 to Special Agent Crow, specifically stated,
13 "That about a month ago, etc. -- he met a person met
14 Harvey Kornbluth" which would confirm my client
15 advises me, there was this meeting that time referred
16 to in the other statement, "who was looking for a car
17 to buy."

18 The indictment alleges that Defendant Kornbluth
19 was not looking for a car to buy. And because it was
20 not his intention to buy a car that his statement on
21 a bank loan application was false and knowingly false
22 and intentionally made. The Government had in its
23 possession the statement of a witness.

24 THE COURT: The normal course --

25 MR. ROTH: This was not provided to defense.

10

1 THE COURT: I'm aware of it.

2 MR. ROTH: I think if the Government did not
3 provide this at that time, it was a knowingly made
4 decision. I think that if it was knowingly made and
5 the Government is then permitted to avoid that decision
6 during the course of the trial, the heart and substance
7 of Brady and its property have been destroyed.

8 The prosecutor said a few minutes ago that the
9 purpose of Brady was to provide material known to the
10 Government and not to the defendant. And that I
11 submit is precisely what this report consists of.
12 Material known to the Government that would exculpate
13 this defendant, which was not known to this defendant.
14 We did not know that. A person named Peter Frappollo
15 was really Peter Michael Frappollo. He gave
16 exonerating evidence to the Government. I think it
17 is this type of conduct, Brady seeks to stop. So
18 that we do have a chance at due process. That we have
19 the equal resources that the Government has; that what
20 their superior resources uncover.

21 THE COURT: Well, you're just repeating yourself
22 at this point.

23 MR. ROTH: I would move the indictment be
24 dismissed.

25 THE COURT: Thank you. All right, Court has

11

1 heard the arguments and taken them into consideration.
2 It appears that the witness, Peter Frappollo, has not
3 been produced. Although the Government has made
4 diligent efforts to try to produce this witness and
5 it would have been to the advantage of this case, if
6 this witness could have been produced.

7 However, it also appears that the defendants
8 had means of communication or were personally in
9 communication with Mr. Frappollo.

10 After consideration of the arguments of counsel,
11 the motion to dismiss for failure to produce Frappollo
12 is denied.

13 MR. BARLOW: Thank you, your Honor.

14 MR. LEFKOWITZ: I respectfully except.

15 MR. ROTH: Likewise.

16 THE COURT: Do you want to go forward at this
17 time? Do you want to go on the defendant's case at
18 this time?

19 MR. LEFKOWITZ: Yes, I do.

20 THE COURT: Do you want to call Agent Crew?
21 We'll bring in the jury first. Do you think we can
22 get rid of the other witnesses because Agent Crew will
23 always be available?

24 MR. LEFKOWITZ: Well, Judge, I am not going to
25 be long with Agent Crew.

1 22

Crew-direct

2 Q That is what is that?

3 A The statement in paragraph 4 that he had gone
4 to Marano's to meet an individual named Tommy. In order to
5 try to lease him a car.

6 Q In order to try to lease a car to Tommy; is
7 that correct?

8 A That's what he told me.

9 Q That's what he told you?

10 A Yes.

11 Q And did you also learn from this gentleman that
12 day whether Mr. Frappollo knew Mr. Kornbluth?

13 A No. He told me he did not know him prior to
14 meeting him at Marano's.

15 Q Did you learn from him whether he told you that
16 Mr. Ragusa knew Mr. Kornbluth?

17 A He told me that he doubted that Ragusa knew
18 Kornbluth.

19 Q Okay. And did you also learn from him during
20 this several-hour interview, Mr. Crew, when he met
21 Mr. Kornbluth?

22 A He told me he met him about a month prior to
23 my interview.

24 Q And did you know the name Hagalusa at the time
25 you were interviewing Mr. Frappollo?

1 23 Crew-direct

2 A Yes, I did.

3 Q Was that as a result of your interview? Did
4 you learn from Mr. Frappollo whether he knew Mr. Hagalusa?

5 A I'm sure that I did.

6 Q And what was that learning that you got?

7 A He didn't know him.

8 Q Did you learn as a result of this interview
9 whether he had any knowledge of a car that Mr. Hagalusa had
10 for sale?

11 A Frappollo told me he knew of a car for sale
12 from Jimmy Hagalusa and that he told Harvey Kornbluth about it.

13 Q And did you learn that they had agreed to meet
14 Hagalusa and agreed to meet concerning the sale of those cars?

15 A Frappollo told me.

16 Q You learned that?

17 A Frappollo told me that.

18 Q Now, did you see Mr. Frappollo at any time since
19 this case started in this court building?

20 A What point in time?

21 Q Well, case started yesterday.

22 A No.

23 Q And when is the last time that you saw
24 Mr. Frappollo?

25 A Six weeks, I am guessing.

24

Crew-direct

Q Six weeks ago. At that time, do you know whether he was under subpoena?

A Yes, I do.

Q From the Government?

A Yes, I know that.

Q Did your office serve him with a subpoena?

A Yes, it did.

Q Is he under subpoena now?

A Yes, he is.

Q Is he here?

A I don't see him.

Q Did you look for him?

A I did.

Q But you didn't produce him?

A I didn't find him.

Q You didn't ask him to come here yesterday, did you?

A I didn't see him yesterday.

Q Did you ask him to come here a week ago when you knew that this case was going to start this week?

MR. BARLOW: Objection, your Honor.

A No.

THE COURT: Sustained.

Question and answer are stricken.

1
2 MR. LEFKOWITZ: No further questions.

3 CROSS EXAMINATION

4 BY MR. ROTH:

5 Q Agent Crowe, when you spoke to Mr. Frappolo at
6 the Government office, didn't he tell you when he met Mr.
7 Kornbluth for the first time that Mr. Kornbluth had been learn-
8 ing to buy a car?

9 A Yes.

10 Q And as a result of his learning from Mr. Kornbluth
11 that Mr. Kornbluth wanted a car, he introduced him to James
12 Hadjaziowski?

13 A That is what he told me, yes.

14 Q Now, you indicated that Mr. Frappolo was present in
15 this court about six weeks ago; is that correct?

16 A I didn't.

17 Q I'm sorry?

18 A I saw him roughly six weeks ago.

19 Q At that time you served him with a subpoena; did
20 you not?

21 A That is correct.

22 Q And that he was to appear in this court in March;
23 is that correct?

24 A I am not sure if it was March or April.

25 Q But at the time this matter appeared in either March

1
2 or April; is that correct?

3 A Yes, sir.

4 Q But did you serve Mr. Frappolo with a subpoena to
5 be here on this passed Tuesday, the day that this matter was
6 set to begin trial?

7 A I did not.

8 MR. ROTH: I have no further questions.

9 THE COURT: You may proceed, Mr. Barlow.

10 MR. BARLOW: Thank you, your Honor.

11 BY MR. BARLOW:

12 Q Agent Crowe, can you tell us who you have contacted
13 since Tuesday morning in an attempt to find Mr. Frappolo?

14 A Yes.

15 I have spoken with Mr. Frappolo's attorney, John
16 Sutter.

17 Q Do you know how many times you spoke to Mr. Sutter
18 since Tuesday?

19 A I personally only talked to him once, I have had
20 other agents --

21 MR. LEFKOWITZ: I am going to object.

22 Q What other agents spoke to --

23 MR. ROTH: I am going to object to whom some other
24 persons spoke to.

25 THE COURT: I will sustain that, he can tell us

1
2 what he did.

3 Q What have you told other agents to do in connec-
4 tion with finding Mr. Prappolo?

5 A I have instructed other agents to proceed to two
6 addresses in Nassau County where Mr. Prappolo in the past
7 has been known to reside.

8 Q When was that?

9 MR. LEFKOWITZ: I object to his entire line of
10 questioning.

11 THE COURT: No, it is overruled.

12 This is relevant to the case.

13 You injected it into the case.

14 MR. LEFKOWITZ: I certainly did.

15 May I state the reason why?

16 THE COURT: If you have injected it, then they
17 have the right to show any mitigation as to what they may
18 have done towards the efforts that you have said were either
19 not done or were undone.

20 MR. LEFKOWITZ: They haven't produced this wit-
21 ness because I wanted him, Judge, and he is asking questions --

22 THE COURT: They have been doing everything
23 possible to produce him, counsellor.

24 MR. LEFKOWITZ: But, your Honor, he has just told
25 the jury and he enunciated --

1
2 THE COURT: They have done everything possible
3 that they possibly could to try and get this man for you,
4 counsellor.

5 MR. LEFKOWITZ: Only after I asked for him
6 yesterday.

7 THE COURT: We both know that.

8 MR. ROTH: As long as the jury likewise knows
9 that, I have no objection.

10 THE COURT: We both know they have done every-
11 thing they could possibly do.

12 MR. LEFKOWITZ: I object to that, that is too
13 inclusive.

14 THE COURT: As far as the Court knows.

15 MR. LEFKOWITZ: They did everything they could
16 have done when I demanded it yesterday.

17 THE COURT: No, it wasn't when you demanded it,
18 it was on the application of the Government, it wasn't on
19 your application, it was on the Government's application.

20 MR. LEFKOWITZ: That was at four o'clock yester-
21 day afternoon.

22 THE COURT: When it was done.

23 MR. LEFKOWITZ: Thank you.

24 THE COURT: Whenever it was.

25 BY MR. BARLOW:

Crowe- recross

1
2 Q Agent Crowe, when you told the other agents to
3 go look for Mr. Frappolo, did you have anything physically
4 with you?

5 A I had a bench warrant issued by the Court.

6 Q Okay.

7 MR. BARLOW: No further questions.

8 THE COURT: Anything further?

9 MR. LEFKOWITZ: I have only one question.

10 RECROSS EXAMINATION

11 BY MR. LEFKOWITZ:

12 Q When you came here as the agent in charge of
13 this case the day before yesterday, did you have any inten-
14 tion of looking for or bringing Mr. Frappolo here?

15 A I did not.

16 MR. LEFKOWITZ: Thank you.

17 No further questions.

18 RECROSS EXAMINATION

19 BY MR. ROTH:

20 Q Agent Crowe, at what time was this bench warrant
21 issued that you have just referred to?

22 A I don't know.

23 Q Would it be a fair statement to say that was
24 yesterday afternoon?

25 A Yes.

1
2 Q And any of the efforts you mentioned, the tele-
3 phone calls, the instructions to the other agents, were any
4 of them before yesterday afternoon?

5 A Not to my knowledge.

6 Q Did you make any efforts before Tuesday when
7 this case began to look for Mr. Frappolo?

8 A I did look for him six weeks ago.

9 Q After that time and before this Tuesday, did you
10 make any efforts to have Mr. Frappolo here on Tuesday or
11 Wednesday or Thursday?

12 A I did not.

13 Q The first effort as I remember to bring Mr. Fra-
14 ppolo to this court began yesterday afternoon; is that
15 correct?

16 A My first efforts, yes.

17 MR. ROTH: Nothing further.

18 THE COURT: Anything further?

19 MR. BARLOW: Yes, your Honor, just one question.

20 RE-REDIRECT EXAMINATION

21 BY MR. BARLOW:

22 Q If you know, Agent Crowe, was Mr. Frappolo under
23 subpoena to appear here on Tuesday morning at ten o'clock?

24 A He was.

25 MR. BARLOW: No further questions.

1
2 MR. LEFKOWITZ: No further questions.

3 THE COURT: Anything?

4 MR. ROTH: Nothing, your Honor, thank you.

5 THE COURT: Thank you, thank you.

6 Now you may proceed, Mr. Lefkowitz.

7 MR. LEFKOWITZ: Your Honor, the defendant rests,
8 and when I say defendant I mean ---

9 THE COURT: The defendant Ragusa.

10 MR. LEFKOWITZ: Yes, Ragusa, Thomas Ragusa.

11 MR. ROTH: The defendant Kornbluth rests, your
12 Honor.

13 THE COURT: All right, all right.

14 Ladies and gentlemen:

15 The parties have rested, the case is completed.

16 I think I will let you go for the weekend at this
17 time and we will start Monday morning.

18 At that time you will have the final summations
19 by the attorneys, you will have the charge of the Court, and
20 then you will have your deliberations.

21 Please don't discuss the case among yourselves or
22 with anyone else.

23 I would like to start -- I have a couple of cases
24 on the calendar on Monday, so I would like to start I would
25 say at ten thirty.

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 16 day of Feb 1976 deponent served the within complaint upon: M. J. Thornton

attorney(s) for Cajaville

in this action, at 225 Cadman Place East
Brooklyn, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.



Robert Bailey

Sworn to before me, this 16
day of Jan, 1976.

William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976

1141 Kornbluth


STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

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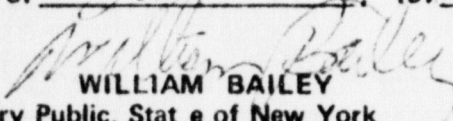
attorney(s) for Capelle

in this action, at 225 Cadman Place East
Brooklyn, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


Robert Bailey

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